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September 13, 2022

VIA ECF

Honorable Paul A. Engelmayer
United States District Court
Southern District of New York
40 Foley Square, Room 2201
New York, NY 10007

Re: *Kitchen Winners NY Inc. v. Rock Fintek LLC*, Case No. 22-cv-05276-PAE
Motion to Extend Deadline to File Proposed Preservation Order

Dear Judge Engelmayer:

This firm represents defendant and counterclaim/third-party plaintiff Rock Fintek LLC in the above-captioned matter. Rock Fintek respectfully submits this letter motion with the assent of all parties to extend the deadline for the parties to submit a proposed preservation order from September 14, 2022 to and including September 30, 2022.

By Order dated September 7, 2022, the Court directed the parties to file a joint letter by September 14, 2022, setting forth the views of the parties and third party Ascension Health as to the appropriate terms of a court order providing for preservation of gloves sufficient to enable future inspection and discovery by any party so requesting. ECF No. 56.

Rock Fintek had provided a copy of the Court's Order to outside counsel for Ascension. In addition, Rock Fintek has been diligently exploring potential preservation options, including discussions with potential statistician experts and discussions with outside counsel for Ascension regarding the logistics of obtaining glove samples from the eleven warehouses where the gloves are being currently stored. As part of its continued efforts to mitigate damages, Rock Fintek has also been in discussions with a potential third-party buyer of the entire inventory of the gloves (other than of course samples to be preserved for this litigation).

In addition, while Ascension has not been able to provide Rock Fintek with a dispositive position by the September 14, 2022 date called for by the Order, its outside counsel has authorized Rock Fintek to report Ascension's position to the Court as follows:

Ascension Health, although not a party and not subject to this court's jurisdiction, states that it cannot provide a dispositive position around inspection and retention of the gloves by the date required by the court due to the unavailability of the key decision maker. Ascension Health can state that it is incurring significant monthly costs to store the gloves and has taken the position that it has lawfully revoked acceptance of pursuant to the relevant uniform commercial code provisions.^[1] Ascension Health has indicated that if the gloves are not removed from its third party warehouses it currently intends to donate or dispose of the approximately 200,000,000 gloves as soon as it can make the necessary logistical arrangements. At present, it does not anticipate being able to begin the disposal process for at least 30 days. If however, Rock Fintek has a legitimate buyer for its gloves and provides Ascension Health with reasonable assurances that the gloves will be removed within the 30 days under acceptable terms, we will of course consider that as an alternative.

Based on Ascension's statement that no disposal process is anticipated for at least 30 days, an immediate threat of the loss of evidence therefore no longer appears to exist.

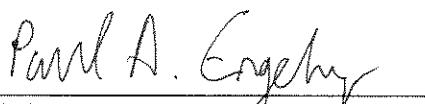
Accordingly, Rock Fintek respectfully requests that the Court grant this letter motion and extend the deadline for the parties to submit a proposed preservation order through September 30, 2022. All counsel assent to relief sought herein.

Respectfully submitted,

/s/Phillip Rakhunov
Phillip Rakhunov

cc: All counsel of record (via ECF)

Granted.
SO ORDERED.


PAUL A. ENGELMAYER
United States District Judge
September 14, 2022

¹ Rock Fintek has reserved and does not waive any rights regarding Ascension's position.